

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200805017**

Release Date: 2/1/2008

Index Number: 9100.00-00, 856.00-00

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

[CC:FIP:B2]

PLR-143014-07

Date:

October 24, 2007

Legend:

Parent =

Subsidiary 1 =

Subsidiary 2 =

Subsidiaries =

Taxpayers =

Accountant =

New Accountants =

Tax Principal =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Year 1 =

Dear :

This is in reply to a letter dated September 21, 2007, requesting an extension of time under §§301.9100-1 and 301.9100-3 of the Procedure and Administration regulations for Taxpayers to file an election under §856(l) of the Internal Revenue Code to treat Subsidiaries as taxable REIT subsidiaries ("TRS").

Facts:

Parent, a domestic corporation, was organized on Date 1 and subsequently elected to be treated as a real estate investment trust ("REIT"). As of Date 2, Parent had acquired all the stock of Subsidiaries.

Both Parent and Subsidiaries intended to elect to treat Subsidiaries as taxable REIT subsidiaries ("TRS"), under §856(l), in Year 1. Since Taxpayers wanted TRS treatment for Subsidiaries in Year 1, specifically as of Date 2, they were required to make the election by Date 3 (2 months and 15 days after the desired effective date).

Taxpayers informed their Accountant of the desire to make this election and that the election needed to be made prior to electing REIT status for Parent; however, Accountant was confused as to the due date for making such election and thus missed the deadline.

On Date 4, Taxpayers' Accountant left the accounting firm, never having filed Form 8875 to elect TRS status for Subsidiaries.

On Date 5, when the New Accountants filed forms to elect REIT status for Parent, the failure to file for Subsidiaries' TRS status was discovered. Subsequently, Taxpayers requested an extension of time to file Forms 8875 with the Service so as to elect Subsidiaries' TRS status to be effective as of Date 2.

Taxpayers make the following representations. The granting of relief under §301.9100-3 would not result in Taxpayers having a lower tax liability in the aggregate for all years to which the election applies than each would have had if the election had been timely made (taking into account the time value of money). Taxpayers did not knowingly choose not to file the election. Taxpayers did not use hindsight in requesting relief. Finally, Taxpayers represent that they are not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under §6662. Taxpayers have submitted the affidavit of their current Tax Principal regarding the mistake of Taxpayers' former Accountant, in support of this requested ruling.

Law and Analysis:

Section 856(l) provides that a REIT and a corporation (other than a REIT) may jointly elect to treat such corporation as a TRS. To be eligible for treatment as a TRS with respect to a REIT, §856(l) provides that the REIT must directly or indirectly own stock in the corporation, and the REIT and the corporation must jointly elect such treatment. The election is irrevocable once made, unless both the REIT and the subsidiary consent to its revocation. Both the election, and the revocation, of TRS status may be made without the consent of the Secretary.

Section 856(l) provides that the term “taxable REIT subsidiary” includes any corporation (other than a REIT) with respect to which a TRS of such REIT owns directly or indirectly securities possessing more than 35 percent of the total voting power or total value of the outstanding securities of such corporation.

In Announcement 2001-17, 2001-1 C.B. 716, the Internal Revenue Service (“Service”) announced the availability of Form 8875, Taxable REIT Subsidiary Election. Pursuant to the Announcement, this form is to be used for tax years beginning after 2000 for eligible entities to elect treatment as a TRS. The instructions to Form 8875 provide that the subsidiary and the REIT can make the election at any time during the tax year. The effective date of the election, however, depends on when the Form 8875 is filed. Specifically, the instructions provide that the effective date of the election cannot be more than 2 months and 15 days prior to the date of the filing of the election, or more than 12 months after the date of the filing of the election. If no date is specified on the form, the election is effective on the date the form is filed with the Service.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in §301.9100-1(b) as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) through (c)(1)(i) sets forth rules that the Service generally will use to determine whether, under the particular facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of §301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of § 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and §301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

Conclusion:

Based on the information submitted and representations made, we conclude that Taxpayers have satisfied the requirements for granting a reasonable extension of time to elect under §856(l) to treat both Subsidiary A and Subsidiary B as a TRS of Parent to be effective as of Date 2. Therefore, Taxpayers are granted a period of time not to exceed 30 days from the date of this letter to submit Form 8875.

This ruling is limited to the timeliness of the filing of the Form 8875. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether Parent otherwise qualifies as a REIT under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of Parent and Subsidiaries is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

This ruling is directed only to the Taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

William E. Coppersmith
William E. Coppersmith
Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions and Products)